

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
IN CLERK'S OFFICE

FEB 25 2004 A 10:37

STERLING ENGINEERING CORPORATION,) U.S. DISTRICT COURT
Plaintiff) DISTRICT OF MASS.
v.) CIVIL ACTION NO. 03-30306-KPN
PIONEER MANAGEMENT SYSTEMS, INC.,)
Defendant,)

**DEFENDANT'S MOTION FOR LEAVE TO FILE
THIRD-PARTY COMPLAINT LATE**

Now come the defendant, Pioneer Management Systems, Inc. ("Pioneer") pursuant to Federal Rules of Civil Procedure Rule 14, and respectfully moves this Court for leave to file their third-party complaint late. A copy of the proposed third-party complaint is attached hereto.

In support of the foregoing, the Defendant states as follows:

1. On February 6, 2004 an answer to plaintiff's complaint was filed by the defendant/third-party plaintiff with this Court and served upon the plaintiff.
2. The undersigned counsel has recently acquired information that would indicate two companies/entities not a party to the action may be liable to the third-party plaintiff for all or part of the plaintiff's claim against the third-party plaintiff.
3. Those parties, named in the third-party plaintiff's complaint are necessary and indispensable parties to this action; and

4. Justice requires that third-party plaintiff be given an opportunity to commence an action against those third-party defendants.

This request is made in good faith, without any dilatory motives or for purposes of undue delay, and it relates to the same conduct ascribed to in the original complaint. As further grounds for its motion, third-party plaintiff states the third party complaint is necessary and proper and should be allowed for the reason that only through recent investigation and research, and not through oversight and inadvertence, did the third party plaintiff identify the third party defendants. Motion for leave to file third party complaint is addressed to sound discretion of trial court; factors considered in exercising this discretion are possible prejudice to plaintiff, complication of issues at trial, timeliness of impleader motion, merit of third party complaint, and additional expense to parties. USCS Fed Rules Civ Proc R 14. This permits all claims arising out of the same transaction or occurrence to be heard and determined in the same action. Atlantic Coast Line R. Co. v. United States Fidelity & Guaranty Co., 52 F. Supp. 177 (M.D. Ga. 1943). In addition no additional time will be required for trial if this motion is allowed.

RESPECTFULLY SUBMITTED,
PIONEER MANAGEMENT SYSTEMS, INC.,

Dated: 2/23/2004

By:



BERNARD T. O'CONNOR JR.

Its Attorney

BBO No. 557872

1391 Main Street - Suite 1022

Springfield, MA 01103-1610

Telephone: (413) 781-5311

Telefax: (413) 746-2707

I HEREBY CERTIFY THAT A TRUE COPY OF
THE ABOVE DOCUMENT WAS SERVED UPON
(EXCEPT FOR THE ATTACHED EXHIBITS AND)
THE ATTACHED ATTORNEY FOR THE DEFENDANT
ON FEBRUARY 23, 2004.

2/23/04

Signature